

401 KAR 47:130. Changes to solid waste permits; expiration of solid waste permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt rules and administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This administrative regulation sets forth the requirements for changes to permits and expiration of permits.

Section 1. Transfer of Permits. A permit is not transferable to any person without prior approval of the cabinet. New owners or operators shall submit a complete transfer application to the cabinet. After a new permit has been issued to incorporate the new owners or operators, the cabinet shall revoke the existing permit.

Section 2. Modification or Revocation of Permits. (1) When the cabinet receives any information (for example, if the cabinet inspects the facility, receives information submitted by the permittee as required in the permit under Section 1 of 401 KAR 47:120, receives a request for modification or revocation under Section 2 of 401 KAR 47:140, or conducts a review of the permit file), the cabinet shall determine whether or not one (1) or more of the causes for a modification or revocation exist as listed in subsection (2) of this section and Sections 3 and 4 of this administrative regulation. If cause exists, the cabinet shall modify or revoke the permit accordingly, and shall request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked, the owner or operator may reapply. If cause does not exist, the cabinet shall not modify or revoke the permit. If a permit modification satisfies the criteria in Section 3 of this administrative regulation for minor modifications, the permit shall be modified without a notice to the public. Otherwise, a proposed permit shall be prepared and procedures in 401 KAR 47:140 followed.

(2) Causes for modification. Paragraphs (a) through (e) of this subsection are causes for modification but not revocation of permits by the cabinet.

(a) Alterations. There are material and substantial alterations or additions to the permitted solid waste site or facility or activity that occurred after permit issuance and which justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. The cabinet has received new information.

(c) Compliance schedules. The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials, shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy (see also Section 3 of this administrative regulation on minor modifications).

(d) The cabinet shall modify a permit:

1. When modification of a closure plan is required under 401 KAR Chapter 48;
2. When the cabinet receives notification of expected closure and finds that any of the previous granted permit conditions are no longer warranted;
3. When the cabinet adjusts the level of financial responsibility required;
4. When the corrective action program specified in the permit under 401 KAR Chapter 48 has not brought the regulated unit into compliance with the groundwater protection standards within a reasonable period of time;
5. To include a monitoring program meeting the requirements of 401 KAR 48:300;
6. When a permit requires a monitoring plan under Section 401 KAR 48:300, but monitoring data

collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard;

7. To include conditions applicable in new or amended standards or administrative regulations;

8. When modification is necessary to protect human health or the environment; or

9. To include conditions applicable as a result of a hearing or enforcement action as specified in 401 KAR Chapter 40.

(e) Notwithstanding any other provision in this section, when a permit is reviewed by the cabinet, the cabinet shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in 401 KAR Chapters 47 and 48.

(3) Owners or operators of a waste site or facility may request a hearing pursuant to KRS 224.10-420 upon modification of the permit by the cabinet.

Section 3. Major and Minor Modifications of Permits. Upon the request of the permittee, and receipt of an administrative and technically complete submission to the cabinet, the cabinet may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, including the procedures of 401 KAR 47:140. Any permit modification not processed as a major modification under this section shall be considered a minor change and shall not require a 401 KAR 47:140 public notice prior to approval. A determination may be made by the cabinet upon filing of the modification application that the modification requested is a major modification. A modification shall be major if the proposed change is of the scope and nature that the cabinet determines that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major modifications shall include, but shall not be limited to:

(1) It is a variance requested pursuant to 401 KAR 30:020, Section 2.

(2) It would increase the area authorized for waste disposal of any unit as represented by the waste boundary as specified by 401 KAR 30:010. This type action is a horizontal expansion.

(3) It would increase the landfill capacity that extends the life of the facility by more than two (2) years and is not a horizontal expansion. This type action is a vertical expansion.

(4) It would add a source of solid waste such that the operating life of the facility would be less than five (5) years.

(5) It would transfer ownership to a person other than that named on the permit.

(6) It is an approval of the corrective action plan required by 401 KAR 48:300, Section 8(9) by the cabinet. The public notice requirements of 401 KAR 47:140 shall not preclude the cabinet from taking actions necessary to mitigate conditions that are an immediate threat to human health or the environment.

(7) Add a geographic area that is a source of solid waste accepted at the facility.

Section 4. Revocation of Permits. (1) The cabinet may revoke a permit during its term or deny a permit renewal application for the following causes:

(a) Noncompliance by the permittee with a condition of the permit resulting in failure to protect human health or the environment;

(b) The permittee's failure in the application or during the permit issuance process to disclose all information required by the cabinet or the permittee's misrepresentation of any such information at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be enforced in accordance with the requirements of KRS Chapter 224 by permit modification or revocation;

(d) A violation of any requirement of KRS Chapter 224 or the respective administrative regulations promulgated pursuant thereto; or

(e) The cabinet has received notification that a facility has been transferred to another person without proper prior approval by the cabinet.

(2) The cabinet shall follow the applicable procedures in this administrative regulation and in 401 KAR 47:140 and 401 KAR Chapter 40 in revoking any permit under this section.

(3) Owners or operators of solid waste sites or facilities may file a request for a hearing pursuant to KRS 224.10-420 upon revocation of the permit or receipt of a notice of violation from the cabinet.

Section 5. Termination of Permits. A permit shall automatically terminate on the expiration date unless the cabinet has reissued the permit or continuation in accordance with Section 7 of this administrative regulation.

Section 6. Duration of Construction and Construction/Operation Permits. (1) Term of permit. Solid waste site or facility construction and construction/operation permits shall be effective for a fixed term not to exceed ten (10) years. The cabinet shall review the conditions of the permit after five (5) years and modify the permit as necessary.

(2) Modification of term of permit. Except as provided in Section 7 of this administrative regulation, the term of a permit shall not be extended by modification beyond the maximum duration specified in subsection (1) of this section.

(3) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsection (1) of this section.

Section 7. Continuation of Expiring Permits. (1) The conditions of an expired permit shall continue in force at the discretion of the cabinet in order to ensure the safe disposal of waste until the effective date of a new permit if:

(a) The permittee has submitted a timely application for renewal of a permit under 401 KAR 47:160 through 401 KAR 47:190. Such applications shall be complete and the applicant shall have paid the appropriate fees due under 401 KAR 47:060 or 401 KAR 47:090;

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints); and

(c) Where appropriate on-site engineering oversight is assured.

(2) Effect. Permits continued under this section remain fully effective and enforceable.

(3) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the cabinet may choose to do any or all of the following:

(a) Initiate enforcement action based upon the permit which has been continued;

(b) Issue a notice of intent to deny the new permit under Section 3 of 401 KAR 47:140. If the permit is denied, the owner or operator shall cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(c) Issue a new permit with appropriate conditions; or

(d) Take other actions authorized by 401 KAR Chapters 47 and 48. (16 Ky.R. 1741; Am. 2187; 2355; eff. 5-8-90.)